

Agency 125

Kansas Agricultural Remediation Board

Articles

125-1. KANSAS AGRICULTURE REMEDIATION REIMBURSEMENT PROGRAM.

Article 1.—KANSAS AGRICULTURE REMEDATION REIMBURSEMENT PROGRAM

125-1-1. Definitions. These terms shall have the following meanings: (a) “Administrator” means the administrator of the Kansas agricultural remediation board.

(b) “Board” means the Kansas agricultural remediation board.

(c) “Incident” means a rupture, leak, spill, emission, discharge, disposal, or any other event that releases an agricultural or specialty chemical accidentally or otherwise into the environment. This term shall not include a release resulting from the normal use of a product or practice in accordance with the law.

(d) “Person” means an individual, firm, corporation, partnership, association, trust, or any other private organization or entity.

(e) “Responsible party” means a person who at the time of the incident has custody of, has control of, or is responsible for the agricultural or specialty chemical.

(f) “Site” shall include all contiguous land that is owned, leased, or controlled by the eligible person when the release occurs, and any other area affected by the release. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-2. Application. (a) Any eligible person who has incurred corrective action costs after July 1, 1997, may seek reimbursement of those corrective action costs from the board. The eligible person shall submit to the administrator a signed, written, complete application form. The application shall be on a form prescribed by the board. Information other than what is outlined on the form may be required by the board if the board determines that the information is necessary in order to make a decision regarding the application. Each application deemed to be incom-

plete by the board shall be returned to the applicant.

(b) Each claim for reimbursement of corrective action costs incurred before the effective date of this regulation shall be submitted within 24 months after September 1, 2001. Each claim for reimbursement of corrective action costs incurred after the effective date of this regulation shall be submitted within 24 months of incurring these costs. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-3. Application process. (a) Each completed application shall be eligible for review and possible funding for 12 months following the administrator’s receipt of the completed application.

(b) Completed applications shall be reviewed by the board on a quarterly basis.

(c)(1) Except as specified in paragraph (c)(2) all completed applications shall be ranked by the board according to the risk to human health and the environment presented by the contaminants at each eligible site. The ranking system developed by the board shall be used to rank each application in relation to other eligible applications to establish priorities and fund expenditures for reimbursement.

(2) Sites that are deemed by the board as requiring emergency action may be ranked. Emergency status may be established by the board under any of the following conditions:

(A) If a public water supply or one or more domestic wells are contaminated or are threatened with contamination levels above state or federal drinking water limits, and no alternative water source is readily available;

(B) if a surface water intake used for drinking water is contaminated above state or federal drinking water limits, and no alternative water source is readily available; or

(C) if a high probability exists for direct human

exposure to or contact with highly contaminated waste, air, soil, or water.

(d) A letter shall be issued to the applicant by the board within 30 days following the board's decision, describing what costs have been approved or disapproved for reimbursement. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-4. Multiple eligible persons. If more than one eligible person incurs eligible corrective action costs for a single incident or for a single corrective action and desires reimbursement, each eligible person shall apply separately to the board. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-5. Arbitration. Any person whose application for reimbursement of corrective action costs has been denied, either in part or in full, may seek arbitration in accordance with the Kansas uniform arbitration act, excluding K.S.A. 5-409 and K.S.A. 5-411 through K.S.A. 5-418 and amendments thereto. The arbitrator and the parties shall use their best efforts to hold the arbitration hearing within 30 days after the commencement of the arbitration. At the next board meeting following the receipt of the arbitrator's award, the arbitrator's award shall be adopted, modified, or rejected by the board, and a final order shall be issued by the board. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-6. Eligible corrective action costs. An eligible person may be reimbursed by the board for any of the following corrective action costs if the board deems the cost necessary and reasonable: (a) Costs for equipment owned by the eligible person and used during a corrective action for excavating, trucking, land spreading and other similar activities, if all of the following apply:

(1) The equipment is reasonably sized and designed to perform the corrective action;

(2) the hours or units of equipment use are reasonable and necessary for the task performed; and

(3) the equipment costs do not exceed reasonable rental costs for equivalent equipment, including any operator costs;

(b) any oversight costs that the eligible person has paid to the Kansas department of health and environment;

(c) contractor charges for meals, lodging, travel, mileage, and other expenses not to exceed the amounts allowed by K.S.A. 75-3223 and amendments thereto;

(d) costs for the land spreading of agricultural chemicals as approved by the Kansas department of agriculture, which shall be reimbursed at the custom rate as determined by the local farm service administration office, but not to exceed \$.50 per cubic yard per acre;

(e) normal employee wages, salaries, expenses, or fringe benefit allocations for time that the eligible party's employees actually spend on a corrective action;

(f) the cost of qualified professional services needed for the effective planning and implementation of corrective action, including engineering, hydrogeologic, field technician, hazardous waste disposal, and general contractor services;

(g) costs related to the investigation and source identification, including collecting and analyzing soil samples and groundwater. These costs may include costs for soil boring, installation of monitoring wells, sample collection, sample analysis, and related activities;

(h) costs to excavate contaminated soils and other contaminated media, including backfilling and grading to restore the contours or drainage characteristics of land altered by the corrective action. This subsection shall not authorize the reimbursement of costs incurred for the removal of buildings or other fixtures, except paving materials that are necessarily removed in the course of excavation;

(i) costs to collect, handle, transport, treat, and dispose of contaminated soils, groundwater, and other contaminated materials;

(j) costs associated with an emergency response that was necessary to abate acute risks to human health, safety, and the environment;

(k) costs to plant or till land on which the eligible person land spreads soils or water when the tilling or planting is required by the Kansas department of agriculture or the Kansas department of health and environment;

(l) costs associated with a corrective action that is required by the Kansas department of health and environment; or

(m) any other costs that the board deems necessary or reasonable. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-7. Ineligible costs. The authority to make the determination as to what constitutes an ineligible cost shall be retained by the board. Ineligible costs shall include the following items: (a) Costs that are not eligible for reimbursement as set forth in regulations adopted by the board;

(b) indirect costs charged by a contractor, unless those costs are allocated in the contract according to a reasonable cost allocation formula that the contractor uses for other similar contracts;

(c) an eligible person's indirect costs;

(d) the cost for the time that the eligible person or any officer of the eligible person spends planning or implementing a corrective action. Reimbursement of normal employee wages, salaries, expenses, or fringe benefit allocation for time that any employee, other than officers, spends implementing a corrective action may be allowed by the board;

(e) costs to construct, repair, replace, improve, relocate, or demolish any building or fixture, unless the cost is required or approved by the Kansas department of health and environment and is a part of a corrective action;

(f) loss or decrease of property values;

(g) loss or decrease of revenue or income;

(h) attorney fees or other legal costs;

(i) costs for relocating residents or business operations;

(j) costs of aesthetic or other improvements that are not essential to a corrective action, except for restorative grading and filling costs;

(k) costs that are reimbursed from another source. If after being reimbursed by the board for any cost, an eligible person is reimbursed for the same cost from another source, the eligible person shall promptly notify the board and repay to the board any duplicative reimbursement;

(l) the cost of replacing the released agricultural chemicals;

(m) liability claims or judgments;

(n) costs incurred by any federal, state, or local governmental entity;

(o) costs for a contractor's services that exceed the contractor's bid price for those services, except for those costs that have increased due to services approved or required by the Kansas department of health and environment;

(p) costs not supported by a cancelled check or other conclusive proof of payment by the eligible person who is applying for reimbursement of those costs;

(q) costs to investigate or repair environmental contamination involving substances that are not agricultural chemicals. If a corrective action involving agricultural chemicals is combined with the investigation or repair of environmental contamination involving substances that are not agricultural chemicals, a portion of the combined project costs may be reimbursed by the board based on the information submitted to the board. If, for any combined project, an eligible person also submits a reimbursement claim to another governmental agency, the cost allocation shall reflect that submission so that this may be taken into account by the board when determining eligibility of the costs;

(r) costs to analyze environmental substances that are not agricultural chemicals, except that costs for the analysis of environmental parameters may be reimbursed by the board if that analysis is needed for the design or implementation of a corrective action;

(s) costs to analyze environmental samples for agricultural chemicals that are not reasonably suspected of having been released at the discharge site;

(t) costs to prepare an application for reimbursement, to contest a decision by the board, or to consult with the board or administrator regarding the application;

(u) expense charges for meals, lodging, travel, or other personal expenses incurred by the eligible person or officer of the eligible person;

(v) supplementary charges for expedited services, including expedited laboratory analysis, mail service, and parcel delivery service, unless required by the Kansas department of health and environment;

(w) contractor charges that are not based on services provided by the contractor and that are not documented;

(x) interest expenses or other financing costs;

(y) costs for the rental or use of land on which the eligible person land spreads soil, water, or other media as approved by the Kansas department of agriculture or the Kansas department of health and environment;

(z) costs for subcontractor service charges or markups;

(aa) costs for environmental audits, assessments, evaluations, or appraisals, unless ordered or requested by the Kansas department of health and environment; and

(bb) any civil or criminal penalty assessed by a

federal, state, county, or other governmental entity. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-8. Payment of corrective action costs. (a) The eligible person may be reimbursed by the board for the reasonable and necessary costs associated with the corrective action incurred by the eligible person if the board determines the following conditions are met:

(1) The eligible person has submitted all the necessary information to ascertain that the costs have been incurred by the eligible person.

(2) The corrective action was taken in accordance with an order or approved by the Kansas department of health and environment.

(3) There are no pending or final administrative, civil, or criminal court cases involving the applicant or the applicant's representative or agent and the contaminated site.

(b) If the corrective action was taken due to an emergency situation, the eligible person may be reimbursed by the board for the reasonable and necessary costs associated with the corrective action incurred by the eligible person if the board determines the following conditions are met:

(1) The eligible person has submitted all the

necessary information to ascertain that the costs have been incurred by the eligible person.

(2) There are no pending or final administrative, civil, or criminal court cases involving the applicant or the applicant's representative or agent and the contaminated site.

(c) If the board determines that any portion of the applicant's reimbursement claim contains clearly ineligible costs, the application shall be returned to the applicant. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)

125-1-9. Conflict of interest. Each member of the board who meets any of the following conditions shall refrain from voting on any application relating to that condition and shall make that condition known to the rest of the board: (a) The board member is an officer or employee of an eligible person whose application is before the board.

(b) The board member has a direct financial or employment interest relating to the application before the board.

(c) The board member has a substantial interest in the eligible person whose application is before the board. (Authorized by and implementing K.S.A. 2000 Supp. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002.)